WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1964

ENROLLED

HOUSE BILL No. 50

Originating in the Committee on the Judiciary
(By Mr. )

PASSED February 5, 1964

In Effect 90 days from Passage

FILED IN THE OFFICE OF
JOE F. BORDERT
SECRETARY OF STATE
THIS DATE 2-10-64
AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five, relating to the organization and operation of voluntary, non-profit, consumer sponsored, direct service health care organizations, and to their licensing and regulation by the state.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-five, to read as follows:

Section 1. Declaration of Policy.—In view of the desirability of making available to the people of this state various methods of procuring and financing increased hospital, medical, dental, other health services, or any one or more of them, the declared policy of the legislature in the enactment of this article is to encourage the organization, promotion, and expansion of health care corporations by exempting them from the payment of all taxes and from the operation of the general insurance laws of this state, but at the same time subjecting them to such regulation as may be necessary for the adequate protection of those members of the public who subscribe for the services offered by such corporations.

Sec. 2. Definitions.—For the purpose of this article, unless the context otherwise indicates:

(a) “Health care corporation or corporation” shall mean a corporation organized and licensed under the provisions of this article.

(b) Direct health care services shall, subject to the limitations contained in this article, include all such
services as are designed to preserve or restore a person’s health.

(c) “Subscriber” shall mean a person (including, as the case may be, the members of his family) who subscribes to the direct health care plan of a corporation.

(d) “Commissioner” means the insurance commissioner of the state of West Virginia.

Sec. 3. Incorporation; Purposes; Name; Limitations.—

Any law to the contrary notwithstanding, non-profit, non-stock corporations may be organized in accordance with the provisions of article one, chapter thirty-one of the code of West Virginia, for the sole purpose of providing any or all of the following direct health care services, at the expense of the corporation, to its members and subscribers through contracts with duly licensed physicians and surgeons, osteopathic physicians and surgeons, chiropractors, chiropodists, nurses, dentists, optometrists and pharmacists, and any others who are licensed to engage in the practice of the healing arts, as well as hospitals, clinics, convalescent centers, nursing homes, and any other persons, corporations, associations,
and institutions engaged in the business of providing
facilities, appliances, supplies and services incidental to
such health care.

No such corporation shall include in its name the words
"insurance", "casualty", "surety", "health and accident",
"accident and sickness", "mutual", or any other words,
which in the opinion of the commissioner, are descriptive
of the insurance, casualty or surety business, or deceptively similar to the name or description of any insurance
or surety corporation doing business in the state.

A corporation shall provide only direct health care
services to the subscribers to its health care plan and
shall not provide for the payment of any cash or cash
indemnity to or on behalf of a subscriber: Provided,
That a corporation may provide a cash reimbursement
to a subscriber who employs or obtains in the event of
an emergency the health care services of any person,
corporation, association, or institution named or referred
to in this section and located outside the territorial
boundaries within which the corporation is licensed to
operate.
Sec. 4. Board of Directors.—The board of directors of any corporation organized under this article shall consist of seven members, all of whom shall be residents of the State of West Virginia, four of whom shall be subscribers to its services, one of whom shall be a person licensed to practice medicine under the laws of the State of West Virginia, one of whom shall be a person connected with the healing arts, and one of whom shall be a member of the general public not connected with any contracting party. The members of the board shall serve without compensation but may be reimbursed for expenses incurred in carrying out their duties as members of the board.

Sec. 5. Exemptions.—Every such corporation is hereby declared to be a charitable, scientific, non-profit institution and as such exempt from the payment of all property and other taxes.

Sec. 6. Supervision and Regulation by Insurance Commissioner.—Corporations organized under this article shall be subject to supervision and regulation by the insurance commissioner. Any provisions of this chapter or
of any other law to the contrary notwithstanding, such corporation shall not be subject to the insurance laws of this state now in force nor to any law hereafter enacted relating to insurance and corporations engaged in the business of insurance unless otherwise provided in this article or unless such other law specifically and in exact terms applies to such voluntary, non-profit health care corporations as are organized under this article.

Sec. 7. Licenses.—(a) Before it may issue any contract to a subscriber, a corporation desiring to establish, maintain, and operate a direct health care plan must first obtain from the commissioner a license as provided in this section.

(b) Applications for an original license shall be made on forms prescribed and furnished by the commissioner and shall be accompanied by the following documents and information: (1) certificate of incorporation; (2) by-laws; (3) list of names and residence addresses of all officers and board of directors of the corporation; (4) contracts between the corporation and persons, firms, corporations or associations to render direct health care serv-
ices; (5) proposed contracts to be issued to subscribers setting forth in detail the direct health care services to which subscribers are entitled and the table of rates to be charged for such services; (6) financial statement showing the assets and liabilities of the corporation, the amount of contributions paid, or agreed to be paid, to the corporation for working capital, the names or name of each contributor and the terms of each contribution; and (7) such additional information as the commissioner may require.

(c) Within thirty days after receipt of an application, the commissioner shall, upon payment to him of a license fee of one hundred dollars, issue a license authorizing the corporation to transact business in this state in the area to be served by it, if he is satisfied (1) that the applicant is incorporated in this state under the provisions of article one, chapter thirty-one of the code of West Virginia as a bona fide, non-profit corporation, (2) that the health care plan which the corporation proposes to operate, as well as the forms of all contracts which it proposes to issue under such health care plan, are based upon sound busi-
ness principles and will be in every respect equitable, just and fair to the subscriber, (3) that the working capital available to the corporation will be sufficient to pay all operating expenses during the subscription period, and (4) that the proposed plan will adequately serve the best interests of all the people of the area in which the corporation intends to operate, regardless of their race, color or religion.

(d) The commissioner may refuse to license a corporation when he determines that such corporation has not complied with the laws of this state, or that it is not in the best interest of the people of the state that such corporation be licensed, or that such corporation would transact business in this state in an improper, illegal, or unjust manner. In such event, the commissioner shall enter an order refusing such license and the applicant therefor may have a hearing and judicial review in accordance with the applicable provisions of article two of this chapter relating to hearings before and judicial review of orders entered by the commissioner.

(e) All licenses issued under the provisions of this
article shall expire at midnight on March thirty-first next following the date of issuance. The commissioner shall renew annually the license of all corporations which qualify and make application therefor upon a form prescribed by the commissioner upon payment to the commissioner of a renewal fee of one hundred dollars.

(f) The commissioner shall, after notice and hearing, refuse to renew or shall revoke or suspend the license of a corporation, if the corporation: (1) violates any provision of this article; (2) fails to comply with any lawful rule, regulation or order of the commissioner; (3) is transacting its business in an illegal, improper or unjust manner, or is operating in contravention of its articles of incorporation or any amendments thereto, of its by-laws, or of its health care plan; (4) is found by the commissioner to be in an unsound condition or in such condition as to jeopardize its obligations to subscribers and those with whom it has contracted; (5) compels subscribers to its health care program to accept less than the obligation due them under their contracts or agreements with the corporation; (6) refuses to be examined or to produce its
accounts, records and files for examination by the commis-

(7) fails to pay any final judgment rendered against it in West Virginia within thirty
days after the judgment became final or time for appeal expired, whichever is later; (8) fails to pay when due to the state of West Virginia any fees, charges, or penalties required by this chapter.

In those cases where the commissioner has the right to revoke, suspend or terminate the license or any renewal thereof of said corporation, the commissioner shall, by order, require the corporation to pay to the state of West Virginia a penalty in the sum not exceeding one thousand dollars, and on the failure of the corporation to pay such penalty within thirty days after notice thereof, the commissioner shall revoke or suspend the license of such corporation.

When any license has been revoked, suspended or terminated, the commissioner may reinstate such license when he is satisfied that the conditions causing such revocation, suspension or termination have ceased to exist and are unlikely to recur.
In the event the commissioner revokes, suspends or terminates a license, the corporation may demand a hearing in the manner provided in article two of this chapter.

Sec. 8. Supervision by Commissioner; Approval of Contracts, Forms, Rates, and Fees.—(a) It shall be the duty of the commissioner to enforce the provisions of this article.

(b) No such corporation shall deliver or issue for delivery any subscriber's contract, changes in the terms of such contract, application, rider or endorsement until a copy thereof and the rates pertaining thereto have been filed with and approved by the commissioner. All such forms filed with the commissioner shall be deemed approved after the expiration of thirty days from the date of such filing unless the commissioner shall have disapproved the same, stating his reasons for such disapproval in writing, except that such period may be extended for an additional period not to exceed fifteen days upon written notice thereof from the commissioner to the applicant. Such forms may be used prior to the expiration of such periods if written approval thereof has been received from the commissioner.
(c) No rates to be charged subscribers shall be used or established by any such corporation unless and until the same have been filed with the commissioner and approved by him. The procedure for such filing and approval shall be the same as that prescribed in paragraph (b) of this section for the approval of forms. The commissioner shall approve all such rates which are not excessive, inadequate, or unfairly discriminatory.

(d) The commissioner shall pass upon the actuarial soundness of all direct health care services plans.

(e) The corporation shall accumulate a fund to be derived from a minimum of two percentum of every subscriber’s monthly premium which shall be known as a contingency and liability reserve fund except that the same shall not exceed an amount equal to three months’ average obligation of said corporation, nor shall it fall below a minimum of one months’ average obligation of said corporation. Said fund shall be expended by the corporation according to rules and regulations to be promulgated by the commissioner.

In addition to the above requirements, every sub-
scriber shall pay into the corporation a membership fee equal to one monthly premium. The membership fee shall be collected in full by said corporation within ninety days of said subscriber’s application for membership.

Sec. 9. Reports by Corporations to the Commissioner.—

Every corporation shall annually on or before the first day of March, file, with its application for renewal license, a report, verified by an officer of the corporation, with the commissioner, showing its condition on the last day of the preceding calendar year, on forms prescribed by the commissioner, which report shall include:

(a) A financial statement of such corporation, including its balance sheet and its receipts and disbursements for the preceding calendar year;

(b) A list of the names and residence addresses of all its officers and directors, and the total amount of expense reimbursement to all officers and directors during the preceding calendar year;

(c) The number of subscribers’ contracts issued by such corporation and outstanding;

(d) The names of those persons (other than sub-
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18 scribers), corporations, associations, and institutions with
19 which such corporation has agreements;
20 (e) Number and type of services currently covered
21 under the health care plan of the corporation.

Sec. 10. Examination of Corporation; Access to Books;

2 Records, etc.—The commissioner or his accredited ex-
3aminers may at any reasonable time and shall, at least
4 once each year, visit each health care corporation and
5 thoroughly examine its financial condition and methods of
6 doing business and ascertain whether it has complied
7 with all of the laws and regulations of this state. All ex-
8 penses of each such examination conducted shall be borne
9 by such corporation. The commissioner shall make a full
10 written report of each such examination of the corpo-
11 ration, certified to by the commissioner or the examiner
12 in charge of such examinations. The commissioner shall
13 furnish a copy of the report to the corporation examined
14 not less than ten days prior to filing the same in his
15 office. If such corporation so requests in writing, within
16 such ten-day period, the commissioner shall consider the
17 objections of such corporation to the report as proposed,
and shall not so file the report until after such modifications, if any, have been made therein as the commissioner deems proper. The report, when filed, shall be admissible in evidence in any action or proceeding brought by the commissioner against the corporation examined, or its officers or agents, and shall be prima facie evidence of the facts stated therein. The commissioner or his examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, whether or not a written report of the examination has at that time been either made, served, or filed in the commissioner's office.

(b) For such purposes the commissioner, his deputies and employees shall have free access to all books, records, papers, documents and correspondence of any such corporation and such books, records, papers, documents and records shall be and remain in the state of West Virginia. The licenses of said corporation shall be automatically revoked if such books, records, papers, documents and records are taken outside the state of West Virginia without the prior written approval of the commissioner.
(c) The commissioner shall revoke the license of any such corporation which refuses to submit to such examination.

Sec. 11. Rules and Regulations.—The commissioner is authorized to promulgate and adopt such rules and regulations relating to health care corporations as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this article and to protect and safeguard the interests of subscribers and the public of this state.

Sec. 12. Required Provisions in Contracts Made by the Corporation with Physicians, Dentists, etc., Hospitals and Other Health Agencies.—Each contract made by the corporation with any person (other than subscribers), corporation, association, and institution, named or referred to in section three of this article shall contain the following provisions:

(a) That the person, corporation, association, or institution will render to any subscriber such service as he may be entitled to under the terms and conditions of the contract issued to the subscriber by the corporation;
(b) That the person, corporation, association, or institution will accept as full payment for services contracted for subscribers such compensation as is set forth in the contract between such persons, corporation, association, or institution and the corporation;

(c) That in the event a surplus remains after an annual accounting of the financial condition of the corporation, such surplus may be used by the Corporation, upon an affirmative vote of a majority of its board of directors for the following purposes, in the order of priority stated below:

(1) To liquidate on a pro rata basis any obligation due any such person, corporation, association, or institution in previous years;

(2) To return the original contributions for working capital, or any part thereof, on a pro rata basis;

(3) To reduce rates charged subscribers, or to expand the services rendered them.

Sec. 13. Contracts to be Furnished to Subscribers;

Contracts with Needy Persons.—(a) Every such corporation shall deliver to each subscriber to its health care
plan a copy of the contract.

(b) A corporation may not accept from private agencies, corporations, associations, groups or individuals, payment for or on behalf of any subscriber of all or any part of the cost of subscriptions for direct health care services to be rendered: Provided, however, That no employer or sponsor may deduct the proportionate share of such payment attributable to any employee or subscriber from that employee's or subscriber's wages or salary, without the prior written consent of the employee or subscriber. It shall be unlawful for any governmental agency to pay subscriptions for or on behalf of any subscriber.

Sec. 14. Advancement of Sums of Money to a Corporation.—Any person may advance to such corporation any sums of money necessary for its business or to enable it to comply with any requirements of law. Such advances and such interest thereon not exceeding six per cent per annum, as may be agreed upon, shall not be a liability or a claim against the corporation or any of its assets, except as provided in this section and shall be reimbursed only out of the surplus earnings of such cor-
poration. This section does not affect the power to borrow money which any such corporation possesses under other laws. No commissions or promotion expenses shall be paid by the corporation in connection with the advance of any such money to the corporation. The amount of any such advance that has not been repaid shall be reported in each annual statement of the corporation.

Sec. 15. Investments.—The funds of any such corporation shall be invested only in the following: Corporate obligations of West Virginia corporations, building and savings and loan shares of West Virginia corporations and state or national bank shares, deposits or certificates of banks located in West Virginia, preferred or guaranteed stock of any West Virginia corporation, real property located in West Virginia, and revenue bonds and government securities of any state or the United States.

Sec. 16. Disposition of Fees and Charges.—All licenses or renewal fees, all auditing charges and any other income derived from this act shall be deposited with the treasurer of the state of West Virginia to the credit of the insurance commissioner to be used only for the cost
Sec. 17. Bonds of Corporation Officers and Employees.—Every officer or employee of any such corporation, who is entrusted with the handling of its funds, shall furnish, in such amount as may with the approval of the commissioner be fixed by the board of directors of the corporation, a bond with corporate surety, conditioned upon faithful performance of all his duties.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 9th day of February, 1964.

Governor